IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

MFA.No. 50 of 2002()

OPMV.1295/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONER IN OP(MV)

ANTO, MUNDAMANI HOUSE,
PARIYARAM VILLAGE, KANJIRAPPALLY P.O.,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS
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1. MAYADEVI, PUNASSERY HOUSE,
ASTHAMICHARA P.O.

* 2. PRADEEP, S/O.PRAKASAN,
KUTTINIKKADU HOUSE, PUTHENCHIRA P.O.

(THE NAME OF THE SECOND RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DT. 11.7.2007 IN I.A.NO.1389/2007)

3. THE ORIENTAL INSURANCE COMPANY,
ROUND SOUTH, THRISSUR.

BY ADV. SRI.ANCHAL C.VIJAYAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.50 of 2002

Dated this the 9th August, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.1295/1997, on the file of the Motor Accidents Claims Tribunal, Iringalakuda, is the appellant. The appeal is filed by the claimant challenging the quantum of compensation awarded to her. Appellant sustained injuries in a motor vehicle accident on 6.7.1997. He sustained fracture to the left elbow. He filed a claim petition claiming a compensation of Rs.50,000/=. The first respondent though entered appearance did not file any written statement. No relief was sought against second respondent. The 3rd respondent, Insurer, alone contested the matter. It was contented that there was no negligence on the part of the driver of the vehicle. It was also contented that no accident as alleged in the accident took place. It was further contented that a criminal case registered was a fabricated one. The quantum of compensation alleged was disputed. The Tribunal, after appreciating the evidence, found that the accident occurred due to the negligence of the driver. It also found that the appellant was entitled to get compensation. The Insurer was also

directed to pay the compensation. Challenging that part of the award by which the quantum of compensation was fixed, this appeal is filed by the petitioner himself.

2. The finding of the Tribunal that the accident occurred due to the negligence of the driver of the vehicle, the appellant is entitled to get compensation, and the 3rd respondent, Insurer, is liable to pay the compensation, have become final and conclusive. The only question now arising for consideration is whether the appellant is entitled to get any additional compensation.

3. Appellant sustained a fracture on his left elbow. He produced a disability certificate. The Tribunal found that the functional disability can be fixed at 3% and awarded a compensation of Rs.9,200/= for disability. It also awarded an amount of Rs.4000/= for pain and sufferings. I am of the view that the Tribunal ought to have awarded at least an amount of Rs.5000/= for pain and sufferings. So, the appellant is entitled to get an amount of Rs.1000/= as additional compensation on that count. I am also of the view that the Tribunal ought to have taken 5% as the functional disability, because appellant sustained a fracture on his left elbow. If 5% is

taken as disability, the appellant is entitled to get an amount of Rs.6000/= more as additional compensation on that count. However, I do not find any reason to interfere with the compensation awarded on other counts.

In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.6000/= as additional compensation from the third respondent, Insurance Company, with 6% interest from the date of petition, till the date of realisation. The third respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 50/2002

J U D G M E N T

Dated: 9th August, 2007.